The State Senate

Senate Research Office

Bill Littlefield
Managing Director

Martha Wigton
Director

204 Legislative Office Building
18 Capitol Square
Atlanta, Georgia 30334

Telephone
404/ 656 0015

Fax
404/ 657 0929

FINAL REPORT

OF THE

SENATE STUDY COMMITTEE ON NATURAL GAS

SENATE MEMBERS

Honorable Greg Hecht
Senator, 34th District
Chairman

Honorable Gloria S. Butler
Senator, 55th District

Honorable Nathan Dean
Senator, 31st District

Honorable Ed Harbison
Senator, 15th District

Honorable Dan Lee
Senator, 29th District

Honorable Horacena Tate
Senator, 38th District

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EXECUTIVE SUMMARY

The Senate Study Committee on Natural Gas was created by Senate Resolution 13 during the 2001 General Session of the Georgia General Assembly. The Committee was charged with studying the economic factors and conditions that have caused the increasing price of natural gas to customers in Georgia since the time of deregulation. The Committee held three public meetings, during which it heard testimony from the Georgia Public Service Commission (PSC), Atlanta Gas Light Resources, many of the state's natural gas marketers, the Governor's Office of Consumer Affairs, the Governor's Consumers' Utility Counsel, the Georgia Electric Membership Corporation, and members of the public.

The Natural Gas Competition and Deregulation Act, Senate Bill 215, was enacted by the General Assembly in 1997 and is codified in O.C.G.A. §§46-4-150 through 46-4-165. The Act permitted, but did not require the then-provider, Atlanta Gas Light Company (AGLC), to drop out of the business of marketing gas, and act solely as the regulated distribution company. Consumers either chose or were assigned to a deregulated gas marketer. The General Assembly opted to permit deregulation on the assumption that, when entered into the competitive marketplace, the cost of natural gas would decrease.

The Committee learned that natural gas prices in Georgia reached record highs during the winter of 2001, due to increased consumption resulting from the record-cold temperatures, and a decreased market supply of the commodity. As a result of the winter's record high commodity prices and lingering billing inconsistencies, many consumers, particularly low-income consumers, were unable to pay their gas bills. Many of these consumers were disconnected from the distribution system. By November 2001, as many as 50,000 consumers, many of whom were low-income, were still disconnected. Once disconnected, a consumer may not reconnect with another marketer until the consumer either pays the bill to the original marketer, or makes acceptable payment arrangements. Since October 16, 2001, the PSC has authorized the release of $15 million from the Universal Service Fund to assist senior citizen, low-income gas consumers in paying their gas bills. Additionally, in response to the high number of consumers whose gas service had been disconnected, the PSC instituted a temporary provider of last resort (POLR) to serve those consumers through June 30, 2002.

According to the PSC staff, the increase in prices through December 2000 was caused by higher wholesale prices. Since that time, however, the higher retail prices can only be partly attributed to wholesale prices. Further, during the time period of November 2000 through October 2001, the average bill for consumers in the deregulated market in Georgia was lower than the average of other southeastern states for four months: November 2000, December 2000, February 2001, and March 2001. For the other eight months, the average Georgia bill was higher. Based on current information, the PSC staff could not definitively identify the reasons that gas prices have remained high, despite a substantial decline in the wholesale price. Some of the possible reasons are: concentration of market share; increases in bad debt; buying power; and insufficient customer information and mobility.

Since January 2000, the combined market share of the top four marketers has grown from 89 percent to over 93 percent. At the same time, the number of certified marketers has dropped from 12 to eight. Marketers have stated that the current high prices are caused by large amounts of uncollectible debt, which resulted from consumers being unable to pay the high cost of gas last winter. Marketers have passed that uncollectible debt to consumers by rolling it into retail prices. Moreover, some marketers charge an increased commodity price as insurance to offset future uncollectible debt exposure. Marketers maintain, however, that the commodity price is driven by more than just the wholesale price and transportation charges. Marketers incur expenses when buying gas, arranging for transportation, storing gas, and paying for lost and unaccounted for gas that leaks from the pipeline during transit.

The Committee was informed of many examples of marketer misconduct, including retroactive rate changes, incorrect disconnections, and illegal deposit limits. While the PSC has been able to remedy some of these violations through the tools authorized in Senate Bill 217, the PSC has been unable to remedy every complaint against a marketer. The PSC lacks the staff to effectively investigate and mediate most disputes, and to adequately address systemic noncompliance. The PSC staff is constantly bombarded with complaints of suspect practices which, in other markets, are either constrained or self-corrected by competitive forces, consumer information and unimpeded freedom of choice. Nonetheless, billing complaints, which constituted the primary consumer complaint prior to January 2001, have all but disappeared.

The Committee learned that other states which have deregulated the natural gas market have provided for a permanent provider of last resort for low-income consumers. These states all retained the incumbent provider as a regulated provider for all consumers, thereby giving consumers a choice between a regulated and a deregulated provider. This regulated option ensures that consumers have the necessary transparency to evaluate and choose between price offerings and services offered by local distribution companies and other market players.

With respect to the base rates charged by AGLC, the Committee learned that prior to deregulation, the cost of the distribution system was subsidized by the industrial consumers. At the time of deregulation, some of this cost was shifted from the interruptible consumers to the residential, small industrial and small business consumers. This cost shift reflected in the base rate is a result of an order by the Federal Energy Regulatory Commission, which permits large industrial consumers to bypass the local distribution system and tap directly into the interstate pipeline. As a result of the order, some industrial consumers threatened to bypass AGLC's distribution system. Therefore, AGLC negotiated with the industrial consumers and entered into fixed contracts based on each consumer's ability to bypass, in an effort to keep the industrial consumers on the system. Consequently, the large industrial consumers no longer subsidize the cost of the distribution system.

The Committee reviewed a wide variety of legislative options to amend the Natural Gas Competition and Deregulation Act. These scenarios ranged from complete re-regulation to increasing deposit limits to reduce marketers' exposure to uncollectible debt. The options included, but were not limited to: keep the basic marketer model but amend legislation to provide more consumer protection and reduce firm customer costs; keep marketers but designate one of them as a supplier of last resort with regulated rates; keep marketers but, as an additional choice and supplier of last resort, establish a regulated natural gas provider; regulate the gas prices offered by marketers; end deregulation completely and return to monopoly service by AGLC; increase the permitted deposit limit to the former allowable amount of 250 percent of the consumer's average bill; reduce the time interval before disconnections are permitted; use the Universal Service Fund to offset uncollectible debt; institute a uniform, state-wide POLR for means-tested, low-income consumers; and increase consumer education.

After careful consideration of the information presented by all parties, the Committee concluded that Georgia is experiencing a crisis in the deregulated natural gas market, which has resulted in significant financial hardship for low-income consumers. Access to natural gas is essential during the winter months; it is not a luxury item. Moreover, the PSC is not sufficiently staffed to pursue every complaint against the marketers, nor does it have the statutory authority to prevent marketers from certain misconduct, such as retroactive pricing. The Committee also concluded, however, that returning to an entirely regulated market is not feasible. Doing so could be considered an unconstitutional taking, requiring the state to compensate marketers for their investments in the Georgia market. The cost could be hundreds of millions of dollars to Georgia's citizens. Therefore, the Committee concluded that it is necessary for the Legislature to amend the current system in order to assist low-income consumers in their efforts to maintain gas service by instituting a permanent POLR, to establish a regulated rate provider, and to provide needed consumer safeguards.

I. Introduction

The Senate Study Committee on Natural Gas was created by Senate Resolution 13 during the 2001 General Session of the Georgia General Assembly. The Committee was charged with studying the economic factors and conditions that have caused the increasing price of natural gas to customers in Georgia since the time of deregulation.

The resolution provided that the Lieutenant Governor appoint the Committee's Chairman and members. The Lieutenant Governor appointed Senator Greg Hecht as the Chairman. Other Senators appointed to serve on the Committee were Senator Gloria S. Butler, Senator Nathan Dean, Senator Ed Harbison, Senator Dan Lee and Senator Horacena Tate. The legislative staff members assigned to the Committee included Ms. Gwin Copeland of the Senate Research Office; and Ms. Mary Riddle of the Office of Legislative Council.

The Committee held three public meetings on the following dates: November 16, 2001 in Lawrenceville, Georgia; December 14, 2001 in Conyers, Georgia; and December 20, 2001 in Jonesboro, Georgia. The Committee heard testimony from the Georgia Public Service Commission (PSC), Atlanta Gas Light Resources, many of the state's natural gas marketers, the Governor's Office of Consumer Affairs, the Governor's Consumers' Utility Counsel, the Georgia Electric Membership Corporation, and members of the public.

II. Background Information

A. History of Deregulation in the Natural Gas Industry– Senate Bill 215

The Natural Gas Competition and Deregulation Act, Senate Bill 215, was enacted by the General Assembly in 1997 and is codified in O.C.G.A. §§46-4-150 through 46-4-165. The Act gives Georgia's natural gas carriers the option of deregulating their services but does not mandate deregulation. United Cities Gas Company, for example, which services the Columbus and Gainesville areas, has not chosen to deregulate. The General Assembly opted to permit deregulation on the assumption that, when entered into the competitive marketplace, the cost of natural gas would decrease.

Once AGLC elected to unbundle, Georgia's deregulation law required them to drop out of the business of marketing gas, and required consumers to be served by other providers. If consumers declined to choose a new provider, they would be assigned to one. Initially, 19 gas marketers were approved to market in Georgia.[1] Consumers switched providers more quickly than expected, causing deregulation to take effect too quickly. As a result, the new marketers were not prepared to handle their new consumer bases. Billing and service problems ensued. As a result, many marketers became financially insolvent and declared bankruptcy or otherwise withdrew from the market. Additionally, consumers grew dissatisfied with inaccurate and inconsistent billing and service.

[1] At one time, 20 gas marketers were operating in Georgia.

B. Difficulties Arising from Deregulation

1. Billing

The PSC received almost 16,000 complaints concerning natural gas during 2000. Approximately 13,000 of those complaints were over billing problems. Consumers primarily complained of not receiving bills, not understanding charges on their bills, inaccurate billing, lack of time given between receipt of the bills and the due date, high base charges in the summer, receiving multiple bills at the same time and poor customer service from the gas companies.

In response to these complaints, the PSC issued a billing rule, PSC Rule 515-7-6, which went into effect Thursday, January 25, 2001. This rule required gas companies to send all bills within 45 days of meter readings and that all bills must be "substantially correct." This rule is still in effect. Under this rule, all bills must be clear and understandable. For example, all charges must be itemized, including the base charge from AGLC. In addition, the PSC required base charges to be "sculpted" in order to more closely match consumers historical usage patterns. Starting in the summer of 2001, consumers saw a decrease in their base rates during the warmer months, and will see an increase in the base charges during the winter months.

While the PSC received numerous complaints in 2000 regarding natural gas, those complaints became less frequent at the end of the year. In December 2000, the PSC received only 584 complaints concerning natural gas. When consumers received their bills in January, however, the number of complaints increased. In fact, on January 22, 2001, the PSC received 800 calls, the vast majority of which were complaints about the price of their December natural gas bills.

2. High Prices in the Winter of 2001

Natural gas prices in Georgia reached record highs during the winter of 2001. Prior to last winter, even $0.60 per therm was unheard of in Georgia.[2] Georgia's market prices for natural gas in January 2001 ranged from $0.79 per therm to $1.45 per therm, depending on the marketer. Prices remained high in February 2001, ranging from $0.83 per therm to $1.14 per therm, depending on the marketer.

The rising cost of natural gas was not unique to Georgia. The cost of natural gas to consumers in neighboring states, all of which continue to regulate natural gas, was no less than the cost to consumers in Georgia. In fact, with respect to the cost of natural gas, Georgia compared favorably with other states. Specifically, when compared with neighboring states, Georgia's December 2000 market average prices[3] were less expensive than those of Alabama, Tennessee, South Carolina and Virginia. Further, Georgia marketers' average costs for December 2000 were less than the cost of natural gas provided by United Cities.

The consumer cost of natural gas was, at least in part, a result of the increase in the well price of natural gas. Georgia gas marketers purchase natural gas from hubs in the Gulf of Mexico area, where most gas used in the United States is produced. In January 2000, the wholesale NYMEX

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[2] Prior to the winter of 2001, the highest rate per therm was $0.56 in 1998.

[3] Please note that this price comparison is based on a ten-year historical average gas usage of 132 therms at December's prices.

(New York Mercantile Exchange) price for natural gas was approximately $2.30 per Dt.[4] By December 2000, that price had risen to $6.00 per Dt., and to over $9.00 per Dt. in January 2001.[5] In addition to the well price, consumers are billed for a fuel charge of approximately 2.5 percent per Dt. to pump the natural gas from the wellhead to Atlanta for distribution throughout the state. Consumers are also billed for a fixed transportation charge of $0.25 to $0.30 per Dt., plus a variable transportation charge. Marketers generally add their own costs to the total bill.[6]

Under deregulation, not only do gas marketers charge consumers more than the wellhead price for a therm of gas, they also add monthly service charges ranging from $4.75 to $12.00. Moreover, while most gas marketers include the interstate capacity charge[7] to their customers in the commodity charge at the per-therm rate, some marketers charge a higher transportation charge which is not included in the commodity rate. While the interstate capacity charge is federally regulated, the method by which the marketer passes that charge to the consumer is not. The presence of the service charges and the unregulated methods of passing transportation charges to consumers results in higher gas bills than consumers experienced under regulation.

Natural gas consumption ran 30 percent higher in 2001 than in 2000, due to colder-than-normal temperatures and an increase in consumer base. As a result, gas marketers and wholesalers saw an increased demand for natural gas last winter. According to the PSC, the increased well price was due to several factors. The United States experienced a natural gas surplus two years ago. At that time, the well price for natural gas had dropped to around $1.00 per Dt. As a result, the natural gas companies were not earning sufficient funds to finance continued drilling and production virtually stopped. In April 1999, the number of domestic natural gas rigs had reached a low of 362. At the same time, due to the low cost of natural gas, businesses began switching to natural gas in lieu of other energy sources, increasing demand for the commodity. As oil prices rose in early 2000, consumers continued to opt for natural gas as a primary energy source.

Ultimately, the demand for natural gas rose so quickly that the gas supply diminished, causing prices to rise. Typically, gas companies wait until the demand, and the cost, of gas rises steadily before they begin to look into producing more natural gas. The procedure for locating new drilling areas and installing new pipelines, along with conducting geological and environmental studies so that more gas may be produced and conveyed to the gulf hubs, usually takes two years; however, the increase in demand is usually so gradual that prices never skyrocket. Last winter was an exception

in that demand for natural gas rose much more quickly than anticipated. Gas companies have worked to alleviate this situation. By July 2001, the number of domestic natural gas rigs had

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4 "Dts." is the abbreviation for "dekatherm" and is the equivalent of 10 therms. A therm is a single unit of natural gas.

5 The price dropped throughout 2001. The *Wall Street Journal*'s September 5, 2001 NYMEX futures listing for October 2001 opened at $2.283 per dekatherm.(approximately $0.23 per therm). The Henry Hub price for natural gas on the stock exchange January 7, 2002 was $2.285 per Dt. NYMEX has established natural gas futures ranging from $2.176 to $3.140 per Dt. over the next year.

6 When natural gas was regulated in Georgia, Atlanta Gas Light (AGLC) charged consumers a fee for maintaining gas pipelines and for transporting natural gas within Georgia. AGLC did not make a profit off of the gas commodity itself. The wholesale purchase price was passed directly to the consumer. However, the company did not have the motivation provided by a competitive marketplace to negotiate for the lowest possible wholesale price.

7 The interstate capacity charge is a fee for transportation of natural gas through the interstate pipeline from the well head to the city gate operated by AGLC.

reached 1068. That number declined to 785 by November 2001 due to low commodity prices.

3. Increased Base Rates for Residential and Small Business Consumers

During the early 1990s, the Federal Energy Regulatory Commission (FERC) issued FERC Order 636, permitting large industrial consumers to bypass local distribution systems and tap directly into the interstate pipeline. This Order presented a viable option to those industrial consumers for whom it would be less expensive to tap directly into the pipeline than to pay fees to the distribution company. As a result, some industrial consumers in Georgia threatened to bypass AGLC's distribution system. Consequently, AGLC negotiated with the industrial consumers and entered into contracts based on each consumer's ability to bypass. Part of the deregulation Act removed the PSC's ability to intervene in these contracts addressing the base rates paid by industrial consumers.

Prior to deregulation, the cost of the distribution system was subsidized by the large industrial consumers. Currently, the interruptible customers presumably pay no more than the incremental cost of serving them; the firm customers[8] pay the cost of the distribution system. In fact, the change in cost allocation after deregulation shifted those costs from large industrial consumers to residential, business, and small industrial consumers.

4. Disconnected Consumers

In January 2001, the PSC issued an order prohibiting marketers from disconnecting consumers for nonpayment until April 1, 2001. As a result of the winter's record high commodity prices and lingering billing inconsistencies, many consumers, particularly low-income consumers, were unable to pay their gas bills. Many of these consumers were disconnected from the distribution system. By November 2001, as many as 50,000 consumers, many of whom were low-income, were still disconnected. Once disconnected, a consumer may not reconnect with another marketer until the consumer either pays the bill to the original marketer, or makes acceptable payment arrangements. In response to the high number of consumers whose gas service had been disconnected, and who could not feasibly satisfy their debt to the marketers, the PSC instituted a temporary provider of last resort (POLR) to serve those consumers through June 30, 2002. The PSC selected a plan offered by Infinite Energy, a Florida based gas marketer. In addition, some marketers opted to reconnect previous consumers for the cold-weather period under payment arrangements.

C. Senate Bill 217

Senate Bill 217, passed during the 2001 Legislative Session, sought to alleviate some of the difficulties arising from deregulation by making key amendments to the Natural Gas Competition and Deregulation Act. The legislation guaranteed the consumer's right to change marketers; provided emergency directives to the PSC; established billing, customer service and consumer education requirements; addressed billing disputes; and directed the PSC to expend Universal Service Fund monies primarily to help low income consumers. With respect to the consumer's right to change marketers, the legislation provided that customers may change natural gas marketers at least once a year without incurring a service charge. Any deposits required by marketers were limited to 100 percent of the customer's average monthly bill. When a customer has paid all bills in a timely manner for a period of six months, or when a customer discontinues service with a

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[8] Interruptible customers are typically large, industrial businesses. They are interruptible because, if necessary, they can switch to an alternate source of energy. Firm customers are typically residential, business and small industrial consumers.

marketer[9], the marketer must refund the customer's deposit within 60 days.

Concerning emergency directives, if the PSC determines that market conditions are no longer competitive, then the PSC, on an emergency basis, may temporarily impose directives, such as price regulations, to protect the interests of retail customers. Market conditions will be considered competitive as long as at least three marketers are servicing residential and small business customers in Georgia. The emergency directives will not extend beyond the first day of July following the annual session of the General Assembly directly after the imposition of the directives.

Regarding billing, customer service and consumer education requirements, the PSC may adopt reasonable rules and regulations relating to billing practices of marketers and information required on customers' bills. Bills must specify the gas consumption amount, price per therm, distribution charges, and any service charges, and the PSC must prescribe performance standards relating to the accuracy and timeliness of bills. Marketers must bill customers for services within 30 days of the date following the monthly meter reading. A 15-day grace period is permitted prior to the application of any penalty. The PSC has the authority to adopt reasonable rules and regulations relating to minimum resources which marketers must have in Georgia for customer service purposes. The rules and regulations must provide procedures relating to the handling and disposition of customer complaints. All marketers must be able to process cash payments from customers in Georgia. Additionally, the PSC may require marketers to notify customers of where customers may obtain pricing information relative to gas marketers.[10]

If a marketer and a retail customer dispute the amount of a bill, the marketer must confer with the customer in an attempt to resolve the dispute. The marketer may not report the name of a customer to any consumer reporting agency until the marketer has conferred with the customer and has complied with all applicable laws, rules and regulations, or has obtained a judgment against the customer. If a marketer realizes a billing error or other mistake resulting in an overpayment by a customer, the marketer must provide a credit or refund of the amount of the overpayment to the customer within 60 days of acknowledgment of the overpayment.

Finally, the PSC is directed to use the Universal Service Fund primarily to assist low income customers until April 27, 2003. After that date, up to 10 percent of the monies in the Universal Service Fund may be used to assist low-income customers in times of emergency and provide energy conservation assistance to low-income customers.[11] The PSC is required to determine the amount of the fund appropriate for the fiscal year. In making this determination, the commission must consider the amount required to assist low-income persons subject to price increases.

D. Analysis of California's Deregulated Electrical System

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In the event that a customer discontinues service with a marketer, the marketer must refund the deposit within 60 days if the customer's financial obligations are settled.

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Senate Bill 217 also required the PSC to publish at least quarterly, in newspapers throughout the state, a summary of the price per therm and any other amounts charged to retail customers by each marketer and any other information which will help customers make decisions regarding choice of a marketer. However, this requirement was contingent on funding for this purpose from the General Assembly, which the PSC did not receive.

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The Universal Service Fund may also be used to help satisfy the uncollectible debt of marketers and to help AGLC expand its distribution system in the public interest.

When California deregulated electricity, the state set a maximum cap on the charge that the local distribution companies could pay for electricity. This cap presented few problems until the wholesale rates for electricity rose above the permitted charge. The local distribution companies were unable to recoup the differential in cost. The absence of new or expanding electric power plants also hindered California's electricity market. As the population of California increased, directly increasing the demand for electricity, the supply dwindled. Local distribution companies were unable to purchase electricity elsewhere due to the price caps. Marketers were discouraged from entering the California market, due to low prospects of making a profit. Since last year's brownouts, California has established additional power plants, and has ended the energy crisis.

III. Committee Research

A. Overview of Deregulated Natural Gas Market

1. Testimony by the Public Service Commission

a. General Overview

Mr. Tom Bond, Director of Utilities for the PSC, testified to the Committee that the PSC staff has been monitoring the relationship between the retail price of natural gas charged by marketers in Georgia and the wholesale price of natural gas. The PSC staff has determined that the increase in prices through December 2000 was caused by higher wholesale prices. Since that time, however, the higher retail prices can only be partly attributed to high wholesale prices.

In addition, the PSC staff has been monitoring the relationship between the retail price of natural gas charged by marketers in Georgia and the retail prices charged in other areas of the southeastern United States. During the time period of November 2000 through October 2001, the average bill for consumers in the deregulated market in Georgia was lower than the average of other southeastern states for four months: November 2000, December 2000, February 2001, and March 2001. For the other eight months, the average Georgia bill was higher. The average amount a typical residential consumer paid in total for that time period to marketers in Georgia was $1,044.77, compared to an average of $1,018.41 for consumers in other southeastern states, and an average of $933.20 for customers of United Cities Gas Company.[12] Thus, the amount paid to marketers in Georgia was 2.6 percent higher than that paid in other southeastern states and 12 percent higher than the amount paid to United Cities.

Mr. Bond stated that, based on current information, PSC staff cannot definitively identify the reasons that prices have remained high. Some of the possible reasons are: Concentration of market share; Increases in bad debt; Buying power; and Customer information and mobility. Since January 2000, the combined market share of the top four marketers[13] has grown from 89 percent to over 93 percent. At the same time, the number of certified marketers has dropped from 12 to eight in the last year. Marketers have stated that the current high prices are caused by large amounts of bad debt. The PSC has requested that the marketers file information concerning bad debt to determine when it was

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12 United Cities Gas Company is a regulated provider serving the Gainesville, Georgia and Columbus, Georgia areas.

13 The leading four marketers are Georgia Natural Gas, SCANA, Shell Energy and New Power Company.

incurred, how high it is, and whether marketers are actually using the high mark-up on their commodity to pay down the bad debt.[14]

In order for deregulation to result in lower prices for consumers, marketers must be able to buy and manage gas efficiently enough that they can make a profit and still charge a lower commodity price than was charged by AGLC. When the Act was passed, most of the parties involved anticipated that deregulation would spread quickly to other states. This broad consumer base would give marketers buying power equal to, or greater than, AGLC's and provide them with economies of scale that would allow them to lower costs. However, deregulation has spread to far fewer states than had been expected. The PSC staff is reviewing whether customers have access to enough information and whether they have enough mobility to take advantage of the market.

b. Comparison of Prices Offered by United Cities

Until January 2001, gas prices charged by Georgia's marketers closely tracked the combined prices of the wellhead cost and the transportation charge. In January 2001, however, the prices charged by the marketers began to deviate from that combined price. Charts provided by the PSC illustrate a \$.20 differential between the sum of the wholesale price of gas and the interstate capacity charge, and the average commodity price offered by the top three gas marketers, Georgia Natural Gas, SCANA and Shell Energy, which has remained consistent since January 2001. Moreover, the prices offered by United Cities, are significantly lower than prices offered by the deregulated marketers. As a regulated gas provider, United Cities gas prices are set by the PSC; United Cities makes only a negligible profit off of the sale of gas. Historically, United Cities incurs \$0.5 million in bad debt each year. This past year, the regulated provider incurred approximately \$2.5 million in bad debt. A PSC order permits United Cities to collect up to \$0.5 million on a rider this year, to mitigate that debt. Deregulated marketers are not subject to PSC limitations with respect to collecting bad debt, and may seek to recover the entire amount by spreading that loss among consumers in the commodity rate.

c. Implementation of Senate Bill 217

Mr. Philip Nowicki, Director of Consumer Affairs for the PSC, testified to the Committee regarding the implementation of Senate Bill 217. Mr. Nowicki stated that since Senate Bill 217 was signed into law on April 28, 2001, the PSC has compelled marketers to provide adequate time periods for consumers to pay untimely bills or corrected bills. The PSC has also directed marketers to extend payment periods when new charges were not disclosed to consumers in advance or in a clear and conspicuous manner. The PSC has also been able to ensure that marketers are complying with the notice and reporting requirements of the Federal Fair Credit Reporting Act when a marketer policy or practice adversely affects a consumer.

Mr. Nowicki noted that, while the PSC has been able to remedy some violations, the PSC has not

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Mr. Bond cautioned that in a competitive market, current prices are based on the current uncollectible debt expense. Since the current prices are based on the marketer's forward-looking projections of uncollectible debt, not the past uncollectible debt, paying off the past bad debt will not effect the current prices. In a competitive market, a new entrant to the market would have to build into its prices forward-looking projections of bad debt, but it would not have any past bad debt. If the old marketers tried to collect for past bad debt from current customers, they would lose all of their customers to the new marketer. If Georgia's marketers really are collecting for past bad debt, that indicates that they have market power and that the market is not competitive – if the market is not competitive, there is no reason to believe that prices will go down. If they are only collecting on future projected bad debt, then there is no reason to believe that the higher costs will go away absent some change in the ability of marketers to protect themselves against future bad debt been able to remedy a large number of them. The PSC does not have the staff necessary to effectively investigate and mediate most disputes, nor to adequately address systemic noncompliance. The PSC staff is constantly bombarded with complaints of suspect practices which, in other markets, are either constrained or self-corrected by competitive forces, consumer information and unimpeded freedom of choice. Furthermore, neither Senate Bill 217 nor the Natural Gas Competition and Deregulation Act provides individual remedies to consumers for damages or a private right of action to pursue them. All of the weight of enforcement falls upon the PSC, which is inadequately staffed to assume these duties. Without adequate resources, the promise of greater consumer protection envisioned by Senate Bill 217 has been and will be largely unrealized.

At the end of each month, the PSC updates its natural gas marketer scorecard on its website. The scorecard tracks the number of billing, service and deceptive marketing complaints for each marketer. On the fifth of each month, the PSC publishes the comparative variable and fixed rate offers submitted by each marketer. The price compositions of the offers vary by marketer. In addition to the price per therm, some marketers add a pipeline capacity charge that other marketers consolidate into the price per therm. All marketers charge an additional customer service charge, ranging from $4.75 to $12.00 a month. The PSC staff standardizes these differences in rate offers and multiplies it by the average residential customer's consumption for a particular month. This "apples to apples" comparison distinguishes the expected price differences among marketers.

The PSC has participated in television interviews with Georgia Public Television (GPTV). The purpose of each interview was to advise consumers on pricing options, consumer rights regarding service disconnection, available payment assistance programs, and relevant PSC rules governing natural gas utility service. The PSC has also participated in a live call-in program on the GPTV statewide radio network to respond to consumer inquires. Each month, GPTV provides the current monthly prices for each marketer as posted on the Commission's website. In June 2001, the PSC published and disseminated a brochure entitled "Choosing a Natural Gas Marketer under Natural Gas Deregulation." The brochure contains information about consumer rights and remedies and lists the marketers, their toll-free numbers and their hours of operation.

Consumers still need more information to make wise choices in the selection of a natural gas provider. For example, marketers are constantly updating their terms and conditions regarding new charges, late fees and cancellation fees. Consumers should also be aware of differences in marketer policies and practices that impact the cost, continuation or restoration of gas service. Through complaints and marketer filings, the PSC is aware of meaningful policy and practice differences among marketers, but lacks the resources to actively disseminate the information. Since consumers do not know these differences, they are impeded from making educated choices. To fulfill this intent of Senate Bill 217, the PSC would need enough staff to ensure the accuracy and validity of the findings and handle the increase in inquiries that would ensue as a result of the release of the findings.

Senate Bill 217 directs the PSC to use the Universal Service Fund monies primarily to assist low-income consumers subject to price increases. On October 16, 2001, the PSC authorized the release of $10 million from the Universal Service Fund to assist senior citizen, low-income consumers. Of that amount, $8 million was designated to go to approximately 32,000 senior, low-income consumers identified by AGLC through an existing application process. These consumers will receive a credit on their bill of $50.00 each month from their marketer for the months of November through March. The remaining $2 million was set aside to match funds going to qualifying senior citizen, low-income consumers through the Department of Human Resources' Low Income Home Energy Assistance Program (LIHEAP). Senior citizen consumers with incomes from 115 percent to 150 percent of the poverty level received a stipend of $158.00; those below 115 percent of the poverty level received $200.00. Those amounts were matched by funds distributed from LIHEAP.

Marketers received a check of either $316.00 or $400.00 from the Department of Human Resources (DHR) on behalf of a qualifying consumer. This program, entitled "Supplemental Home Energy Program (SHEP) for Seniors" commenced on November 1, 2001. All eight marketers have signed contracts with DHR agreeing to receive payments from DHR for qualifying consumers. Consumers are determined eligible for funding at the county level coordinated by the 18 Community Action Agencies throughout the state in the AGLC service areas. As of today, more than 5,000 applications have been approved.

On December 4, 2001, the PSC allocated an additional $5 million from the Universal Service Fund to DHR to further assist low-income consumers with the payment of their natural gas bills. Of these funds, $2 million will be used to assist low-income senior citizens and $3 million will be used to assist other low-income citizens. To receive assistance, consumers must qualify according to federal poverty level guidelines established by the LIHEAP Program.

So far, the Commission has had the most success implementing this part of Senate Bill 217. Unfortunately, these allocations represent a majority of the funds available in the Universal Service Fund. The low-income beneficiaries represent a small percentage of the number of eligible, low-income consumers in need of assistance. To continue to fulfill this objective, funds will need to be available from other sources.

2. Testimony by Consumer Advocates

a. Governor's Consumer Utility Council

Mr. Brandon Marzo, an attorney for the Governor's Consumer Utility Council, spoke to the Committee regarding the four issues of the highest importance from the consumer stand point: the need for a permanent provider of last resort, the improper conduct of the marketers, the high cost of natural gas, and the importance of consumer education.

Mr. Marzo emphasized that Georgia needs to establish a permanent POLR in the natural gas market, which will provide a safety net for those consumers who are unable to pay the unregulated price of gas. The POLR should provide the commodity at a market or below-market rate. By doing so, the state would provide assistance to consumers who want to pay for gas but who are unable to pay their entire bills.

Mr. Marzo testified that Ohio was a good example of a functioning deregulated electric market. Although Georgia's market is a natural gas market, the concepts and the relationships between consumers and marketers are substantially the same, so examples from these markets should carry extensive weight in reviewing the effectiveness of deregulation as well as the types of legislation that may be needed to continue with deregulation in Georgia. Although other states have begun deregulating natural gas, Georgia is currently the only state to completely deregulate natural gas, and as such Georgia is the great experiment that other states are watching.

Mr. Marzo recommend Ohio's Percentage of Income Payment Program (PIPP), which is a program which places a 7 percent cap on the amount that qualifying low income individuals spend from their gross income on energy costs. This program would require some source of funding. However, this kind of program provides a mechanism for outreach to customers trying to pay their energy bills.

Mr. Marzo commented that adding a POLR would not discourage new marketers from operating in Georgia. Georgia's Act has already made choice a reality for many consumers by forcing them into a fully deregulated marketplace. This aspect of Georgia's market is still very attractive to many marketers, and establishing a POLR does not affect the relationships that marketers have formed with their customers since the markets were opened in the late nineties. In fact, having a POLR will provide the benchmark for consumers who still have their reservations about the cost savings available in deregulation.

Allowing a regulated entity to market gas to Georgia consumers will bring the stability and the regulated option that many Georgians are currently demanding without complete re-regulation. Furthermore, having a POLR can assure Georgians that low income seniors and families will be protected from freezing during periods of extreme cold and high prices. The legislature will have the ability to tailor the regulated program in a manner that best serves Georgia consumers.

Mr. Marzo gave the Committee several examples of marketer misconduct, including retroactive rate changes, incorrect disconnections, and illegal deposit requirements. Specifically, marketers have applied gas rates quoted for one month to the gas consumed the month before, for which a lower price had been quoted. If the commodity costs more than consumers expect it to cost during a billing period, consumers cannot curtail consumption in order to reduce their bill. This practice works a serious harm on conservation efforts, and can seriously undermine consumer confidence in the market. Marketers should not be permitted to charge consumers a price above the published price for a given month.

With respect to improper disconnections, the Consumer's Utility Council has received reports of marketers disconnecting service to consumers who were up to date in their payments. Mr. Marzo attributed these mistakes to a rush to disconnect consumers, and suggested that the state needs to emphasize the consumer's right not to be disconnected. Disconnection from service is a substantial penalty and should be treated with more respect. Moreover, Mr. Marzo stated that the deposit limit is not a barrier to entry into the Georgia market. The Georgia market should be attractive to new marketers, as every customer in Georgia needs a gas provider.

Senate Bill 217, passed during the 2001 Legislative Session, limits deposit requirements to 100 percent of the customer's average monthly bill based on past customer usage and current marketer prices. Nonetheless, marketers currently assess standard deposits, which are not necessarily related to the amount of gas consumed, or the price of that gas. Mr. Marzo emphasized the need to provide a definition for the "customer's average bill" to ensure that when computing that average, the marketer is addressing that particular customer's usage, and not average monthly consumer usage in general.

With respect to the high price of natural gas offered by the marketers, Mr. Marzo noted that the prices of the four marketers that control 93 percent of the market share are virtually the same. While marketers attribute their high price to the bad debt incurred as a result of last winter, not every marketer has the same level of bad debt, and the prices should reflect that variance. When asked why a new marketer would enter the market offering the same rate offered by the three largest marketers, Mr. Marzo responded that it is unclear why the prices are not varying among marketers with different portfolios.

Addressing consumer education, Mr. Marzo emphasized the need to focus on what people need to know in order to operate in the deregulated market. He added that it should be the marketers' obligation to market their products and sell their services; the burden of consumer education should not be carried by the PSC alone.

b. Governor's Office of Consumer Affairs

Mr. Jim Hurt, Special Assistant to the Administrator of the Governor's Office of Consumer Affairs, and former Director of the Consumer's Utility Council, spoke to the Committee both in the capacity of a consumer, and in the capacity of an expert on deregulation in Georgia. Mr. Hurt served as the Director of the Consumer's Utility Council from 1995 though 2000, the time in which deregulation was implemented, and served on the study committee that created the deregulation Act. Mr. Hurt noted that the study committee discussions always left out the essential nature of natural gas services. Home heating is essential; it is not a luxury. Moreover, natural gas as a commodity is homogeneous. Its value cannot be altered intrinsically. In Mr. Hurt's opinion, the only benefit from deregulation has been the creation of the fixed rate plan for consumers.[15]

Mr. Hurt indicated that, in his opinion, Georgia went too far with deregulation. As Mr. Marzo mentioned, other states which have deregulated natural gas allowed the incumbent to stay in the business. Georgia, however, required the incumbent, AGLC, to drop out of the business of marketing gas, and required consumers to be served by other providers. Consumers switched providers more quickly than expected, causing deregulation to take effect too quickly. As a result, the new marketers were not prepared to handle their new consumer bases, leading to billing and customer service problems. Had consumers been permitted to stay with AGLC, these problems might have been avoided.

Mr. Hurt covered each Section of the Natural Gas Competition and Deregulation Act with the Committee, and indicated the Sections which he felt were either hindering the system or hurting consumers. With respect to the deposit requirement[16], and marketers' request to increase that deposit limit, Mr. Hurt suggested that permitting this increase would ultimately hurt the low-income people the state is seeking to help. Low-income consumers cannot afford exorbitant deposits. Moreover, when billing is incorrect, causing a consumer to get behind in payments, it is difficult for a low-income consumer to catch up.

Mr. Hurt also discussed the emergency directives listed in O.C.G.A. § 46-4-157. Current law states that market conditions *shall* be considered competitive as long as at least three marketers remain in the market. Mr. Hurt suggested permitting the PSC to determine if the market has become uncompetitive due to collusion. It should be easier to reimpose deregulation on marketers when necessary; the legislation is too rigid as written. When asked if taking away the set numbers would drive the marketers out of Georgia due to insecurity about the future of the marketplace, Mr. Hurt stated that he cannot imagine the PSC declaring a state of emergency when one does not exist.

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15 In a fixed rate plan, a consumer can lock in on a set price per therm for a certain time period. As a result, that consumer's bill is not subject to the price fluctuations in the marketplace.

16 O.C.G.A. § 46-4-156(h).

Finally, Mr. Hurt addressed the Universal Service Fund.[17] Mr. Hurt stated that Georgia's Universal Service Fund is unique because it includes a provision allowing AGLC to receive funds for the expansion of the distribution system. AGLC has submitted 108 applications for expansion, all but three of which have been granted. The law mandates that any funds remaining in the Universal Service Fund at the end of a fiscal year must be available for refund to retail customers, as determined by the PSC. Mr. Hurt indicated that it is tempting to have a large amount remaining at the end of a year to refund. Further, while the law permits the PSC to expend Universal Service Fund monies to offset the bad debt of marketers, no money has been allocated for that purpose.[18] This provision was included to assure marketers of financial solvency.

c. Coalition for Fair Natural Gas Prices

Councilman Derrick Boazman of Atlanta, speaking on behalf of the Coalition for Fair Natural Gas Prices testified to the Committee that he receives more telephone calls concerning natural gas than concerning city services. Most of the calls concerning natural gas address the amount of time it takes for a consumer to be reconnected after that consumer is disconnected for nonpayment. The difficulties arising from natural gas deregulation have resulted in a crisis in Georgians' confidence in the state's ability to help them. Councilman Boazman expressed concern that the state energy assistance numbers, specifically the LIHEAP are not helpful to consumers, as the information numbers often misdirect callers. Further, Councilman Boazman claimed that instead of increasing competition, as deregulation was expected to do, it has led to price fixing. Councilman Boazman asserted that if no one is satisfied with deregulation other than the marketers, the system needs to be amended.

d. United Youth Adult Conference

Mr. Michael Langford of the United Youth Adult Conference testified that natural gas service is necessary for survival and is not a luxury item. He mentioned receiving complaints of marketer misconduct. For example, consumers who changed marketers during a billing period have been charged by both marketers for the entire billing period. The bills were not pro-rated to adjust for the amount of service actually provided by each marketer. Mr. Langford also mentioned that the majority of the consumers who are currently disconnected have good payment records and would like to satisfy their debt; they are financially unable to do so.

3. Overview of the Base Rate

Atlanta Gas Light Company testified to the Committee regarding the base rates which are charged to consumers. Essentially, the base charge is "the customer's share of Atlanta Gas Light Company's cost of doing business, including expenses for the people and facilities that serve the customer and the cost of upgrading and maintaining local pipelines." The Act requires this charge to be based on the straight fixed variable method of rate design. For the residential consumer, this total monthly charge includes a customer charge ($9.05 per customer), a dedicated design day capacity (DDDC) charge ($5.69 multiplied by the consumer's DDDC factor), a meter reading charge ($0.71 per

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[17] The Universal Service Fund is governed by O.C.G.A. § 46-4-161. The Universal Service Fund is subsidized by the interruptible customers– 90 percent of the fee the industrials pay to AGLC for the distribution system goes into the Universal Service Fund.

[18] According to the PSC, no marketer, to date, has demonstrated compliance required by the law to receive these funds. While no money has been allocated directly to marketers to offset their uncollectible debt, Universal Service Fund monies have been paid to marketers on the behalf of low-income consumers.

customer), a peaking charge ($0.94 multiplied by the DDDC factor), a franchise recovery fee ($0.47 multiplied by the DDDC factor), a social responsibility charge ($0.20 per customer to provide assistance to low-income consumers), an environmental response cost charge ($0.5572 multiplied by the DDDC factor), and a pipeline replacement program fee ($0.35 per customer). The DDDC charge is based on each individual consumer's consumption, and ensures that each consumer will have sufficient gas in the pipeline to satisfy the consumer's needs on the coldest day of the year. Based on an average residential consumer's DDDC factor of 1.29, the total monthly base charge for an average month is $20.19.

For the commercial consumer, the base charge is contingent on the size of the consumer and the type and number of meters. The total monthly charge typically includes a customer charge (for a customer using less than 2.5 Dts., the customer charge is $20.39 per customer; for a customer using 2.5 Dts. or greater, the customer charge is $40.78 per customer), a dedicated design day capacity (DDDC) charge ($7.65 multiplied by the consumer's DDDC factor), a meter reading charge ($0.71 per customer, or $150 per MCF meter), a peaking charge ($0.94 multiplied by the DDDC factor), a franchise recovery fee ($0.47 multiplied by the DDDC factor), an environmental response cost charge ($0.5572 multiplied by the DDDC factor), and a pipeline replacement program fee ($0.35 per customer). A commercial consumer with a 5.00 DDDC factor and no MCF meters, who was greater than 2.5 Dts. would pay a monthly charge of $89.93.

4. Overview of Marketer Charges

As previously stated, until January 2001, prices charged by Georgia's gas marketers closely tracked the combined costs of the price of gas from the wellhead and the interstate transportation charge. In January 2001, however, those prices began to deviate from the wellhead/transportation charges, at an average of $0.20 per therm over that amount. Representatives for the gas marketers testified to the Committee that the commodity price is driven by more than just the wholesale price and transportation charges. Marketers incur expenses when buying gas, arranging for transportation, storing gas, and paying for lost and unaccounted for gas that leaks from the pipeline during transit. Additionally, marketers were subjected to uncollectible debt as a result of consumers being unable to pay for the high cost of gas during the winter of 2001.[19] Marketers have passed that uncollectible debt to consumers by rolling it into retail prices. Moreover, some marketers charge an increased commodity price as insurance to offset future uncollectible debt exposure.

B. Georgia Electric Membership Corporation as a Provider

The Georgia Electric Membership Corporation (EMC) testified to the Committee concerning the interest of many of Georgia's EMCs in entering the market as a gas provider for their members. The EMCs assert that the goal of natural gas deregulation was to give natural gas customers a choice of marketers and encourage competition. The Natural Gas Competition and Deregulation Act does not identify restrictions on marketers, provided they can meet rigorous certification requirements.

EMCs have been asked by their consumer-members to offer natural gas service, so that the members have more choice with respect to natural gas marketers. EMCs contend that an EMC gas marketing affiliate would add diversity to the marketplace, and would allow consumers the option of a member-owned, not-for-profit cooperative. Walton EMC applied to be a certificated marketer; the

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19 The moratorium on disconnections issued by the PSC in January 2001 forced marketers to continue serving non-paying consumers, causing the uncollectible debt to increase.

PSC, acting on advice from the Attorney General's counsel, declined certification. The courts have since upheld this position. The EMCs would like for the Legislature to clarify current law to allow EMCs to act as natural gas providers.

House Bill 679 was introduced in 2001 to clarify Georgia statute to allow EMCs to participate in the deregulated natural gas market. This legislation ensures that an EMC's gas marketing affiliate will not have advantages over other natural gas marketers. In an effort to protect both consumers and for-profit businesses, the bill contains safeguards, such as requiring EMCs to keep separate books for their gas and electric businesses, and prohibiting EMCs from raising the price of electricity in order to provide below-market gas prices to beat the competition.

IV. Solutions Presented to the Committee

A. Scenarios Presented by the Public Service Commission

The PSC provided the Committee with a list of five scenarios that could potentially be pursued legislatively. The PSC offered this list to the Committee as a guide, not as a list of recommendations. The five scenarios, listed with pros and cons for each, are: keep the basic marketer model but amend legislation to provide more consumer protection and reduce firm customer costs; keep marketers but designate one of them as a supplier of last resort with regulated rates; keep marketers but, as an additional choice and supplier of last resort, require Atlanta Gas Light company to provide natural gas at regulated rates; regulate the gas prices offered by marketers; and end deregulation completely and return to monopoly service by Atlanta Gas Light Company.

The first scenario, keeping the basic marketer model but providing more consumer protection and reducing firm customer costs, would involve removing the straight fixed variable requirement[20] for the base rate design, allowing the PSC to design base rates which better address the shift in costs resulting from deregulation, modifying provisions concerning base rates paid by the interruptible[21] consumers so that the PSC could shift some of the cost of maintaining the distribution system back to those consumers[22], enhancing the PSC's emergency powers[23], requiring that marketer terms and

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Prior to deregulation, the base rate was a volumetric charge, which coordinated the base rate with consumption. Current law requires the PSC to determine AGLC's base rates by using the straight fixed rate variable method of rate design.

21

In exchange for a less expensive rate, interruptible customers can switch to an alternative energy source in a gas shortage situation. These customers are typically industrial in nature.

22

Current law states that the PSC does not have the authority to approve or disapprove the rates and terms of service between AGLC and the large industrial customers for gas distribution service. Without this authority, the PSC is powerless to shift any of the costs of maintaining the distribution system back to the industrial sector.

23

Current law specifies the conditions under which market conditions will be considered competitive, regardless of indications of collusion. The Legislature could amend the law to give the PSC more flexibility to address the problem of price gouging.

conditions be approved by the PSC[24], and requiring marketers to file notice with the PSC when the marketers change their prices[25].

The second scenario, designating one marketer as a supplier of last resort with regulated rates, would provide a safety net for the market by establishing a permanent POLR for low-income consumers. This scenario could also extend a regulated provider option to all consumers, regardless of income, who might choose to be served by a provider with regulated rates. Other states, such as Ohio and Pennsylvania, which have deregulated the natural gas market retained a regulated provider[26]. These states have had fewer complications arising as a result of deregulation. The Legislature could choose to emulate these models by giving marketers the opportunity to choose to provide service at regulated rates, either solely to low-income consumers as a provider of last resort, or to all consumers. This marketer could sell gas at a price which fluctuates with wholesale prices and provide customer service at a price established by the PSC. This scenario protects consumers from the potential of increased commodity prices if those prices are not constrained by market forces. It could, however, force other marketers out of the state if the majority of the consumer base chooses service offered by the regulated marketer.

The third scenario, requiring AGLC to provide gas service at a regulated rate, would more closely replicate the models used in Ohio and Pennsylvania. Again, consumers would have a regulated option. In this scenario, the availability of the option could be expedited; instead of allowing marketers to decide whether to become regulated, the Legislature could designate AGLC as the regulated marketer. This scenario would provide consumers with a regulated option, and could potentially encourage the unregulated marketers to compete with AGLC for customer base. However, AGLC's costs to reenter the market are unknown and could be high. These costs would inevitably be passed to the consumer.

The fourth scenario, regulating the prices of marketers, could be accomplished by imposing a purchased gas adjustment on gas prices, as well as price caps on other services, or by implementing a performance based regulation, in which the PSC sets price benchmarks and if the marketer can perform services more efficiently and less expensively, the marketer shares the profit with the ratepayers. These options could result in more competitive prices for ratepayers, but could increase regulatory costs, and cause marketers to leave the state, as they would essentially be regulated.

The fifth scenario, ending deregulation completely and returning to monopoly service by AGLC, would return the market to its pre-deregulation status, and would provide all of the traditional protections to consumers. However, marketers would likely contend that re-regulating was an unconstitutional taking and would demand compensation from the state. At this point, it is impossible to foresee exactly what those costs might be. Additionally, shifting all 1.5 million

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[24] Marketers take the position that they can change their terms and conditions of service at will. Their terms and conditions of service are not subject to PSC approval. This freedom has led to marketers imposing new fees on customers already on long-term contracts.

[25] Requiring marketers to file prices with the PSC would give the PSC the ability to provide the public with more accurate pricing information, and gives consumers a better ability to know the rates they are being charged. However, it creates a regulatory burden on the marketers.

[26] In these states, the initial regulated provider continued to provide natural gas; however, consumers were given the option of remaining with that regulated provider or switching their service to an unregulated gas provider. The majority of the consumers in both states remained with the regulated provider.

natural gas customers back to AGLC, which currently has no gas or billing system, could cause serious and substantial disruptions in the system.[27]

B. Marketer Recommendations for Increasing Competition and Relieving Bad Debt

A representative of each deregulated marketer in Georgia was given the opportunity to present recommendations to the Committee concerning uncollectible debt problems, high prices, the large number of disconnected consumers, the lack of competition in the market, and customer education. The recommendations for each issue were similar among the marketers.

As uncollectible debt is a component of the high prices, marketers suggested that resolving the bad debt would allow them to lower prices. Marketers recommended raising the permitted deposit limit to the former allowable amount of 250 percent of a consumer's average bill, from the current allowable amount of 100 percent of the average bill. Marketers must wait 45 days after the end of a billing cycle to disconnect a consumer due to nonpayment. Billing cycles are approximately 30 days long. Thus, a marketer must provide service to a consumer for a minimum of 75 days, or 2.5 months, even if the consumer never pays a bill. Allowing the deposit limit to match marketers' exposure to uncollectible debt would offset debt incurred through nonpayment. Additionally, marketers recommended reducing the amount of exposure to which marketers are subject by reducing the time interval before disconnections are permitted. Further, current law states that deposits must be returned after six months of service. Georgia has a four month gas market. Under the law, a consumer who begins service with a marketer in April and makes timely payments would receive a deposit refund in October, prior to the heating season. If that consumer failed to pay during the heating season, when bills are more expensive, the marketer would no longer have the consumer's deposit to offset the debt.

All of the marketers who testified before the Committee recognized the need for a uniform, state-wide POLR for low-income consumers. Marketers emphasized that the POLR should be available to "can't pays" rather than to "won't pays," and that marketers should try to establish payment plans with disconnected consumers so that they may be reconnected to the distribution system. Further, marketers and the PSC should encourage lowering consumer costs through better insulation, and should continue low-income assistance programs; marketers should work with social services and accept social service payments. Marketers also asserted that the Universal Service Fund should be used to help low-income consumers, or to directly offset the uncollectible debt of the marketers.

With respect to the lack of competition in the marketplace, marketers suggested that, rather than looking at the number of providers controlling the market to determine if it is working, the state should look at the customers and the new products resulting from deregulation, such as the fixed rate option. Competition has driven the weaker players out of the market; however, the gas market still has more players than does telecom. If the state wants to increase competition, the state could ease the certification process at the PSC. According to one marketer, Georgia has the most expensive, extensive and lengthy certification of the deregulated states. At least two marketers have declined to enter the market here due to this process. The Georgia market is still highly regulated, especially concerning the certification process and rules imposed by the PSC. Marketers do not have the staff to keep up with all of the regulations.

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[27] Under scenario three, AGLC could ease back into the system by taking only a certain number of new customers per month, or by being limited to provide service to only 10 percent of the consumer base during the first year as a commodity provider.

All of the marketers stressed the need for more customer education. Marketers suggested a public-private partnership to educate customers, and indicated that marketers should become more active in marketing. Customers need to be educated so that they will be able to make decisions between marketers and foster more competition among marketers, and ultimately, lower prices.

C. Suggestions Presented by Atlanta Gas Light Company

Mr. Kevin P. Madden, Executive Vice President for Atlanta Gas Light Resources, testified to the Committee regarding the state's need of a program to take care of those who cannot afford heat, the absence of retail gas prices that reflect true competition, the importance of providing consumer education, the need to assess marketer debt, the value of minimizing the duplication of consumer services, the need for centralized billing, and the local distribution company serving as an alternative choice provider to other market entrants.

With respect to the need for a Provider of Last Resort (POLR) program to take care of those who cannot afford heat, Mr. Madden stated that prior to deregulation, other customers of the system subsidized low-income consumers. Most other states that have deregulated the natural gas industry built a POLR into their deregulated systems, and in most cases designated the local distribution company as the POLR. This program is typically limited to those who have a financial need for assistance, although some states have broader charters for the provision of services by local distribution companies. The state should seek to establish a permanent POLR in order to provide assistance to those in need, reconnect immediately, and ensure that the POLR service is reasonable and competitively priced. Mr. Madden also noted that AGLC had filed with the PSC to serve as a POLR and that AGLC offered to provide this service at a competitive price using a national market index to establish the natural gas commodity price.

Regarding retail prices, Mr. Madden reiterated that four marketers control 93 percent of the natural gas market in Georgia. The law presumes the existence of competition if three marketers are in the state. Mr. Madden suggested that the Legislature amend the law so that the PSC could take appropriate action when questions are raised about retail prices, and not be tied to the presence of three or four more marketers to establish a presumption of competition. For example, Mr. Madden said that under a traditional market power analysis test, a high percentage of market share should serve as a warning light which would trigger a review of whether retail price competition exists.

Mr. Madden cautioned that consumers should not look solely at wholesale natural gas prices to gauge the retail gas price, as it is necessary to factor in interstate transportation and storage costs. Although some of the current commodity cost is based on the high-cost gas purchased by marketers, but not consumed, last winter, the current retail gas prices contain a substantial bad debt component which must be addressed by the Committee and Governor's Task Force if lower prices are to occur. Mr. Madden asserted the marketer's bad debt can be traced to some marketers' undercapitalization, inaccurate and untimely billing procedures, inadequate deposits and credit assessments, moratorium on disconnections, and last winter's record cold winter and record high wholesale gas costs. In order to assess the impact of that bad debt on current commodity prices, a review should look at how much bad debt was reserved by the marketers, and ascertain the level of bad debt that actually exists on the marketers' books. Moreover, the state, on behalf of natural gas consumers, needs to gain an understanding of what portion of bad debt relates to each contributing cause.

With respect to consumer education, Mr. Madden emphasized that all parties, the PSC, AGLC and each of the marketers, should work together to have understandable terms in order to better help and protect consumers. Customer service representatives should be better trained to help consumers.

In addition, minimizing duplicate services would help consumers by both cutting costs and by making it simpler for consumers to know who to call for service, billing questions, or to register a complaint. Currently, duplicate services exist between the customer service functions of the marketers and AGLC. A centralized billing function would allow consumers to benefit from economies of scale and corresponding cost savings.

As for the alternative choice provider, Mr. Madden said that most states that have gone through deregulation have provided for the local distribution company to continue to offer regulated natural gas service at competitive prices based on a national transparent market index. This regulated option ensures that consumers have the necessary transparency to evaluate and choose between price offerings and services offered by local distribution companies and other market players.

V. Committee Findings

A. Conclusions

The Committee concluded that Georgia is experiencing a crisis in the deregulated natural gas market, which has resulted in significant financial hardship for many consumers. Access to natural gas is essential during the winter months; it is not a luxury item. Moreover, the PSC is not sufficiently staffed to pursue every complaint against the marketers, nor does it have the statutory authority to prevent marketers from certain misconduct, such as retroactive pricing. The Committee also concluded, however, that returning to an entirely regulated market is not feasible. Doing so could be considered an unconstitutional taking, requiring the state to compensate marketers for their investments in the Georgia market, potentially costing Georgia's citizens hundreds of millions of dollars. Establishing a regulated gas provider will balance the market; capping the price on gas would likely result in productivity loss. Therefore, the Committee concluded that it is necessary for the Legislature to amend the current system in order to assist low-income consumers in their efforts to maintain gas service by providing a permanent POLR, to establish a single regulated rate provider, and to provide needed consumer safeguards.

B. Committee Recommendations

1. Establish a Permanent Provider of Last Resort

The Committee recommends establishing a permanent POLR at a regulated price with an allowance for disconnections for consumers who cannot afford high gas prices, using means testing to determine eligible consumers. The program should include a budget billing process, with consumers required to pay at least a portion of the bill. The Universal Service Fund should be primarily designated to assist the POLR consumers.

2. Establish a Single Regulated Gas Provider

The Committee recommends establishing a single regulated provider of natural gas which may provide service to any consumer, regardless of income, who opts for regulated service. The regulated provider will be determined by the PSC and will be subject to terms and conditions promulgated by the PSC.

3. Permitting Electric Membership Corporations to Market Gas

The Committee requests that the Legislature consider permitting the EMCs to enter the market as natural gas providers for their members, provided that methods to prevent cross-subsidization are implemented.

4. Prohibit Retroactive Rate Changes

The Committee recommends legislation which prohibits marketers from charging consumers a commodity price above the published price for a given billing period.

5. Amend Emergency Provisions

The Committee recommends amending the emergency directives in O.C.G.A. § 46-4-157, so that if collusion causes price fixing in the majority of the market, the PSC may intervene. However, the PSC may only intervene upon presentation by the claimant of clear and convincing evidence. The burden of proof will be on the claimant.

6. Prohibit Penalties for Switching Marketers

The Committee recommends granting the PSC the authority to prohibit marketers from assessing penalties or other fees on consumers for switching marketers. AGLC's tariff currently permits consumers to switch marketers once a year at no charge; any additional changes within a year require a $7.50 fee. The Committee additionally recommends prohibiting marketers to require more than a 30 day notice prior to changing marketers.

7. Require Marketers to File Rates with the PSC

The Committee recommends legislation requiring marketers to file their general rates with the PSC whenever rate changes occur.

8. Increase the PSC Budget

The Committee recommends increasing the PSC's budget for expert personnel and consumer complaints staff. The PSC needs additional staff who, like the present staff, are highly educated professionals, to implement the consumer protection mechanisms available, to handle rate cases and studies, and to recommend system changes.